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Walter G. Blackwell, President

December 4, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte
WC Docket Nos. 96-98, 01-338

Dear Mr. Chairman:

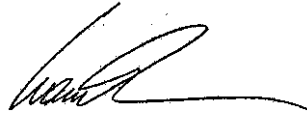
The Association of Communications Enterprises (ASCENT), which counts more competitive telecommunications carriers as members than any other trade group, urges the Commission as part of its Triennial Review to adopt the attached market-based proposal. The proposal is designed to promote meaningful local competition, encourage the development of a new competitive market for wholesale local switching services, spur the deployment of network facilities, and continue to give new entrants access to critical network elements while ultimately reducing the unbundling obligations of incumbent carriers.

The ASCENT plan rests upon the supposition that if the Commission provides regulatory certainty regarding the ongoing availability of the UNE-Platform, the number of competitive carriers offering local phone service would soar. This CLEC "boom" would set the stage for the creation of a robust wholesale market for local switching services populated by firms with either a combination retail/wholesale strategy or pure "camers" carriers." Once competition for wholesale switching services reached a point where no single wholesale provider enjoyed monopoly power, as determined by the states, local switching could be removed from the list of network elements required to be unbundled by incumbent local camers.

The ASCENT plan has several clear benefits. It would provide regulatory certainty both for new entrants struggling to compete as well as the sources of capital they depend on for financing. It would encourage network deployment. It would give the states a critical role in evaluating and fostering local phone competition. Finally, it could allow the Commission and the states at a certain juncture to absolve incumbents of the requirement to provide unbundled local switching at regulated cost-based rates.

For these reasons, we urge and appreciate your consideration of the attached proposal.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Walter G. Blackwell', with a stylized, flowing script.

Walter G. Blackwell
President

Enclosure

Cc: Commissioner Kathleen Q. Abemathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Christopher Libertelli
Jordan Goldstein
Matthew Brill
Dan Gonzalez
William Maher
Jeffrey Carlisle
Richard Lerner
Scott Bergmann
Michelle Carey
Brent Olson
Tom Navin
Jeremy Miller
Rob ~~Tanner~~
Marlene Dortch



A MARKET-BASED APPROACH TO UNBUNDLED LOCAL SWITCHING AND UNE-P TRANSITION

December 4, 2002

INTRODUCTION

The UNE-Platform (UNE-P) has increasingly demonstrated its value as a viable local market entry strategy for competitive local exchange carriers (CLECs). Unrestricted access to incumbent unbundled local switching (ULS) priced at forward-looking, cost-based rates, in the absence of competitively priced and readily available alternatives, serves as the cornerstone for CLEC deployment of fully featured local services to new subscribers when utilizing UNEs and the UNE-Platform.

UNE availability, and in particular the availability of unrestricted ULS, have come under heavy attack by incumbent carriers. Incumbents are exerting pressure on the Federal Communications Commission for authority to price ULS at “market based” rates rather than at forward-looking costs as required by the 1996 Telecommunications Act (the Act). If successful, the campaign could destroy the competitive value of UNEs and UNE-P.

The following summarizes a regulatory approach to retain the incumbents’ ULS obligations under the Act until reasonably priced competitive ULS alternatives are available to competitors in each market, as determined through factually-based state regulatory proceedings. Underscoring the approach is the proposition that competitive service providers would be impaired in their ability to offer services in specific markets if they did not have access to ULS through the incumbent or alternative wholesale sources.¹

THE CONCEPTUAL FRAMEWORK

The ASCENT proposal concerning ULS and UNE-P rests on several pivotal criteria. Before ULS and UNE-P may be eliminated: 1) competitive wholesale sources of switching services must be determined to exist in each “market,” and 2) the incumbent must show that it operates an automated, timely, and economic process for transferring or migrating former incumbent subscribers to competitor networks and switches at commercial volumes in a manner that is entirely transparent to subscribers.²

The FCC should establish appropriate nationwide implementation guidelines. The states, however, are best poised to evaluate market-by-market factors within their borders and therefore should be given the responsibility to establish triggers for eliminating ULS as an

¹ Although this proposal focuses on ULS, ASCENT remains equally concerned about the continued availability of other UNEs – including transport – in the absence of true wholesale competition for such elements of the UNE-Platform. In sum, it is absolutely essential for the UNE-Platform to remain available to non-incumbent carriers to ensure the ultimate development of competitive local phone service.

² See e.g. *Ex parte Presentation*, CompTel, PACE, CC-01-338 (October 31, 2002) (Addressing Hot Cuts and Loop Impairment)

incumbent obligation when new entrants have ready access to competitive sources of wholesale switching.

As the attached affidavits help to confirm, a true wholesale market for switching services does not currently exist.³ To remove elements of the UNE-Platform at this point in time, including switching, in the absence of substitutable competitive services clearly would impair the ability of competitive carriers to provide services to their subscribers.

EVALUATION FACTORS FOR DETERMINING THE EXISTENCE OF A COMPETITIVE WHOLESALE SWITCHING MARKET

Factors

A “competitive market” test for wholesale local switching entails the following primary factors. Each factor listed is essential to a competitive market. Where some but not all factors are satisfied, the ILEC should remain subject to the requirement to make switching available on an unbundled basis. Where the factors are met for some CLECs but not others (e.g., an independent carrier will sell to CLECs with a certain minimum level of demand, but not to smaller CLECs), the ILEC should remain subject to the requirement to make unbundled switching and UNE-P available for the smaller CLECs.

1. The “market” has at least five (5) independent carriers. Each carrier operates a switch and contracts to provide wholesale switching services to CLECs at economically reasonable pricing approximating TELRIC rates. A “market” for wholesale switching service is a central office, which is the geographic area that a single ILEC switch serves, and encompasses all customers, both business and residential, within that market.
2. None of the five independent wholesale carriers has monopoly power in related retail markets for business and residential customers of local telephone service. Carriers wielding monopoly power at the retail level lack the incentive to sell as much wholesale switching capacity as possible since they lose more profitable retail accounts for every wholesale customer they secure. Therefore, an ILEC would not count as an independent carrier even if it continued to offer wholesale switching services on an unbundled basis.
3. The five independent wholesale suppliers are all likely to remain in the market and are financially stable. A supplier whose financial future is suspect is not a viable competitive option.
4. Sufficient switching capacity is available for sale from the independent carriers to meet CLEC needs in the market.

³ Affidavits from the following companies are attached: CIMCO Communications Inc., Oakbrook Terrace, Illinois; Granite Telecommunications LLC, Quincy, Massachusetts; and InfoHighway Communications Corp., New York, New York.

5. There are sufficient personnel and related resources at the independent carriers to operate their switches reliably.
6. CLEC customers can be transferred seamlessly between carrier (ILEC or CLEC) switches. Absent the ability to execute seamless transfers, a particular switch is not a viable competitive option for CLECs to use in serving their existing customers in the market.
7. There are viable sources of independent switching for small CLECs needing only limited capacity and for CLECs with a larger customer base and demand for switching services. If the only available sources of competitive switch capacity require minimum purchases above the level most entering or newly entered CLECs need, these sources are not viable for these CLECs and for them, there effectively is no competitive market in wholesale switching.
8. The independent operators can provide CLECs with a stable platform over which CLECs could deliver reliable telecommunications services to their customers.

Explanation

Incumbents claim that because competitors currently have ready access to competitive alternatives to ULS, incumbents should no longer be required to make unrestricted ULS available to competitors. Regulators must evaluate incumbent claims on a market-by-market basis to test the accuracy of those claims before incumbents may be relieved from their statutory ULS obligations.

Evaluation of market competitiveness is well founded in anti-trust law. Market analysis under the antitrust laws begins by defining relevant product and geographic markets. The relevant product here is wholesale switching service, and any technology that efficiently supplies this service should be included in the product market.

It should be presumed that the geographic reach of a market for wholesale switching service is a central office, the area that each ILEC switch currently serves. Only after considering any significant costs associated with providing switching services over an increasing distance should a larger market be considered by a state PUC.

In assessing the level of competition in a market, the number of competitors and ease of entry are the two primary considerations. It is assumed that considerable expertise is required to offer wholesale switching services and that entry into this market is neither easy nor extremely difficult.

Most CLECs are not likely to have a volume of business sufficient to warrant purchase of a dedicated switch. Development of a competitive market would likely depend on entry by providers offering wholesale switching services. Or a CLEC might purchase a switch despite lacking sufficient volume to occupy it, and then sell its unused capacity to other CLECs.

One consideration not fully addressed by the factors listed is the extended transitional period that would be needed if CLECs were to transfer to new switching sources. A competitive market would not spring up overnight. It might be advisable to divide the transition period into a series of steps and design standards for each.

AUTOMATED INCUMBENT PROCESS FOR TRANSFERRING FORMER SUBSCRIBERS TO COMPETITOR NETWORKS MUST BE SHOWN TO EXIST

The existence of a competitive wholesale switching market, by itself, is not sufficient to relieve an incumbent from its ULS obligations under the Act. Regardless of whether competitors own switches or operate their own networks, incumbents must be able to seamlessly migrate subscribers from the incumbents' networks to competitors' switches or networks at commercial volumes (consistent with Factor 6 in the competitive market test above), a process commonly known as the "hot cut" process.

Factors

The incumbent must demonstrate that it possesses the capability to migrate UNE/UNE-P lines to carrier networks for any requesting carrier in a manner that is timely, efficient, nondiscriminatory, and transparent to the carriers' end users. The incumbent's capabilities must be verified by a State-selected independent third party, and subject to non-performance penalties, before this second test for lifting the incumbent's ULS obligation can be met. At minimum, the following factors must be considered in evaluating incumbent customer migration capability:

1. The transfer process must be automated. Manual "hot cut" processes currently used by incumbents to migrate subscribers are susceptible to delays, errors, and ultimately to service impairment. Each of the factors to be considered in evaluating incumbent customer migration capabilities depend on an automated migration process.
2. Reliability is a key factor in any migration process. Incumbents must demonstrate that customers can be transferred to competitor networks without service loss or interruption with no less than a 95% success rating.
3. Transfers must be performed in reasonable time frames to preclude delays that could result in lost customers for competitors. Extensive coordination between the incumbent and competitor demands an established process that ensures a minimum of delay in customer migrations once the competitor places new orders.
4. The incumbent must demonstrate its customer migrations process can accommodate commercial order volumes. It is for this reason that an automated process is so critical. Delays caused by an upsurge of competitor orders could be significant and result in numerous lost subscribers. Incumbents must anticipate significant order volumes and develop a process capable of scalability.
5. None of the above factors will be meaningful to competitors unless incumbent migration costs are economically viable and cost-based (on a forward looking basis). Exceptional customer migration processes would be meaningless if not priced

economically. Any pricing evaluation must include a determination that the sum of *all* of the costs that a requesting carrier would incur to self-provide service, as charged by the ILEC, do not exceed the current retail monthly rate the incumbent charges its own end users.

6. An independent third party must be designated to test incumbent migration system capabilities, consistent with third party evaluations of incumbent operations support system capabilities conducted under commission investigations into in-region interLATA market entry. Test results will corroborate incumbent claims for reliability, timeliness, and volume capabilities.

FEDERAL GUIDELINES, STATE IMPLEMENTATION

The FCC appropriately maintains the position of establishing national guidelines for states to follow in evaluating when competitors are no longer impaired if incumbent ULS no longer would be available at forward-looking costs. Those guidelines should include the aforementioned factors. Establishment of national impairment guidelines governing ULS availability is entirely consistent with previous establishment of federal guidelines on matters such as regional Bell operating company pricing that is ultimately developed in state proceedings.

The Act firmly establishes State authority to determine whether a network element need no longer be unbundled. Because a variety of wholesale switch market factors and costs, and incumbent customer migration capabilities, uniquely affect the point where a competing carrier is no longer impaired by deploying its own facilities in each market, the States are best suited to evaluate economic data on a market-by-market basis when determining ILEC unbundling obligations. Several states including Texas, Tennessee, Georgia, and Kansas have conducted, or initiated their own proceedings to consider ULS availability. ASCENT proposes a continuation of these state proceedings under federally established evaluation criteria.

AFFIDAVIT

State of **Illinois**

County of DuPage

I, William Capraro, Jr. hereby affirms that I **am** the President and CEO of CIMCO Communications, Inc. In this capacity I am responsible for the overall management and day-to-day operations of the corporation as a whole.

CIMCO Communications, Inc. is a provider of local telephone service in the State of Illinois. This service is currently provided utilizing UNE-P. CIMCO has been providing integrated communications services for over **17** years to over 2,500 customers. CIMCO's offering includes voice, data and Internet, enabling customers to bundle all their communications needs into one complete package. CIMCO employs 100+ employees in Chicago with aggressive growth plans in 2003. The critical success factor for CIMCO's customers is continuity of service through a single provider for products, as well as, serving areas. Currently, CIMCO provides all services ubiquitously throughout the greater Chicago marketplace, this is extremely important to our customers.

As a competitive provider of local telecommunications service, a transition by the Federal Communications Commission away from UNE-P is certain to disrupt my company's ability to continue to provision service to its customers. Of particular concern is the company's ability to purchase wholesale switching as a UNE.

It is not possible, nor economically feasible, for CIMCO to self-provision local switching services at this time. Were the FCC to forebear from requiring the ILECs to provision switching services as a UNE, the company would be unable to obtain reliable substitute switching services at reasonable rates. CIMCO has conducted comprehensive market research and vendor analysis to identify alternative switching options. The imperative key is to reach all customers ubiquitously in all wire centers. **The result of our research indicates that no wholesale switching products or offerings exist at this time, other than the SBC offering we are currently utilizing.**

In the absence of a competitive wholesale market for switching services, it is unreasonable to believe that the incumbent would have any incentive to provision services at reasonable rates. **Accordingly, until such a market exists on a central office, by central office basis, there is little doubt that CIMCO Communications would be impaired from provisioning services to its customers absent the availability of UNE switching services.**

W. O. Capraro, Jr.
(Signature of affiant)

Subscribed and sworn to before me, a Notary Public

Mary Rita Flanagan

in the State and County above named, this 2nd day of December, 2002.



AFFIDAVIT

State of New York)
)
county of Suffolk)

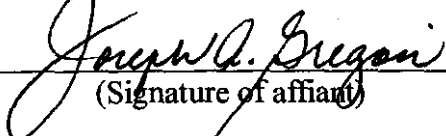
I, Joseph Gregori, hereby affirm that I ~~am~~ the Chief Executive Officer of InfoHighway Communications Corp. ("InfoHighway.") In this capacity I am responsible for overall strategy, operating results and increasing shareholder value.

InfoHighway is a provider of local telephone service in 11 states within the Northeast, primarily in Massachusetts, New York and New Jersey. This service is currently provided utilizing UNE-P. In addition to providing local telephone service, we offer long distance, data, internet access, DSL, and other services including web hosting and large scale network design and cabling. Currently we deliver service to over 6,000 customers, primarily small-to-medium sized businesses. Our services are supported by 110 employees and we differentiate our service offering through value-added bundled packages that include unique rate and billing plans and focus on exceptional customer service.


As a competitive provider of local telecommunications service, a transition by the Federal Communications Commission away from UNE-P is ~~certain~~ to disrupt my Company's ability to continue to provision service to its customers. Of particular concern is the Company's ability to purchase wholesale switching ~~as~~ a UNE.

It is not possible, nor economically feasible, for InfoHighway to self-provision local switching services at this time. Were the FCC to forebear from requiring the ILECs to provision switching services as a UNE, the Company would be unable to obtain reliable substitute switching services at reasonable rates. For more than five years we have developed relationships with other carriers, and have extensive experience in DS-1 service offerings and other dedicated services that these competitors provide. However, in all of our dealings with these alternate providers, none offer analog switching services as the ILEC provides in the small-to-medium sized business market. If such an alternate existed, we would be utilizing such.

In the absence of a competitive wholesale market for switching services, it is unreasonable to believe that the incumbent would have any incentive to provision services at reasonable rates. Accordingly, until such a market exists on a central office, by central office basis, there is little doubt that InfoHighway would be impaired from provisioning services to its customers absent the availability of UNE switching services.


(Signature of affiant)

Subscribed and sworn to before me, a Notary Public, in the State and County above named, this
22 day of November, 2002.



LOIS CIRAOLO
Notary Public, State of New York
No. 01C15071869
Qualified in Nassau County
Commission Expires January 21, 2003

AFFIDAVIT

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I, Rand Currier hereby affirm that I am the Vice President of Operations of Granite Telecommunications LLC (“Granite”). In this capacity I am responsible for the entirety of Granite’s technical network operations and carrier relations.

Granite is a premier provider of competitive local exchange telecommunications services in the Verizon and Bell South service territories to several thousand subscribers. Granite also provides a host of competitive interexchange services. Granite's local exchange services are currently provided primarily utilizing Verizon and BellSouth unbundled loops, transport, and switching (collectively the unbundled network element – platform or “UNE-P”). Through Granite's service delivery processes, subscribers can directly interface with Granite's network services and the UNE-P platform to:

1. View and analyze bills
2. Pay bills and review account adjustments
- 3. Order new services**

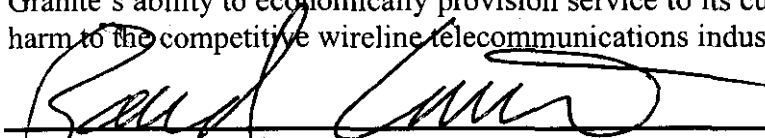
Granite's mission is simple and straight forward: to provide a full complement of desirable competitive local exchange and interexchange telecommunications services to small and medium sized business at competitive rates, with service levels and options exceeding those of the incumbent telephone companies. Granite's goal is attract and retain subscribers and serve as its subscribers' single point of contact for all communications needs.

Granite's management team has more than a century of combined telecommunications industry experience. Granite managers have held senior management positions in other competitive local exchange and interexchange companies. Through their experience, Granite managers have evaluated and deployed Verizon and BellSouth network services, including the UNE-P, as well as evaluated competitive network alternatives to the services and unbundled network elements provided by the incumbents.

In Granite's collective experience, reliance on incumbent carrier UNE's and the UNE-P is fraught with operational challenges. Not the least of these challenges is the significant uncertainty associated with continued use of incumbent network elements in light of incessant incumbent legal and regulatory challenges and appeals. Access to competitive alternatives would ideally be desirable. Regrettably, no realistic alternatives for the incumbent UNE-P, and unbundled local switching, currently exist on a market-by-market basis. Granite has engaged in

discussions with switch vendors and other network service providers. While Granite has determined that it would be technically possible to purchase switching equipment or functions from other vendors *in some exchanges or markets*, it is not practically possible, nor moreover, economically feasible, for Granite to self-provision local switching services and be able to serve subscribers at competitive rates. Added costs of collocation, transport, traffic back hauling, and need for additional technical expertise would result in rates that would render Granite's local service entirely uncompetitive.

In the absence of a meaningfully competitive wholesale market for switching services, transport, and other UNE functionalities, it is unrealistic to believe that the incumbent would have any incentive to provision services at forward-looking, cost-based rates. Accordingly, until such a competitive market is deemed to exist on a central office by central office basis, there is little doubt that Granite Telecommunications LLC will remain impaired in its ability to provisioning competitive services to its subscribers absent the availability of alternative competitive switching services. Any Federal Communications Commission UNE transition plan that would ultimately preclude access to the UNE-P is certain to disrupt, if not terminate, Granite's ability to economically provision service to its customers, and stands to due significant harm to the competitive wireline telecommunications industry



(Signature of affiant)

Subscribed and sworn to before me, a Notary Public/

in the State and County above named, this 21st day of November, 2002.
